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Of Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

**BETH RYAN NELLE,**

Plaintiff,

v.

**LEGACY LABORATORY  
SERVICES, LLC,**

**AND**

**LEGACY HEALTH,**

Defendants.

CIVIL NO. 3:19-cv-01470-HZ

FIRST AMENDED COMPLAINT

Unlawful Employment Practices

(Title VII; FMLA; ADA)

**DEMAND FOR JURY TRIAL**

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**Nature of the Action**

1.

Plaintiff brings this action for monetary relief, damages, costs, punitive damages and attorney fees to redress injuries done to her by Defendant or

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL  
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officers, employees or agents of said Defendant in contravention to her federally protected rights in violation of the Civil Rights Act of 1964; Title VII; Title I of the Americans with Disabilities Act of 1990, as amended (ADA); and the Family Medical Leave Act (“FMLA”).

### **Jurisdictional Allegations**

2.

This Court has federal question jurisdiction pursuant to 42 U.S.C. § 2000e *et seq.*, 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 2000e-5(f)(3), as incorporated into the ADA by 42 U.S.C. § 12117(a).

3.

Venue is proper within the District of Oregon, Portland Division, pursuant to 28 U.S.C. § 1391(b) because all or substantially all of the events or omissions giving rise to the claims arose in this judicial district, and on the separate basis that Defendant resides in Oregon and has its principal place of business in this judicial district.

4.

Plaintiff has properly exhausted her administrative remedies. Plaintiff filed a timely claim with the Equal Employment Opportunity Commission (“EEOC”) raising the issues alleged herein and has received the required Notice of Right to Sue from the EEOC authorizing Plaintiff to commence a civil action against the Defendant. Plaintiff has timely filed her Complaint.

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### **General Factual Allegations**

5.

At all times mentioned herein, Plaintiff was a citizen of Welches, Oregon.

6.

Defendant was and is at all times herein mentioned a domestic nonprofit corporation and is and was at all times herein mentioned doing business in Clackamas County, Oregon.

7.

At all material times herein, Plaintiff was supervised by Defendant's employees or agents and Plaintiff relied on the actual or apparent authority of Defendant's employees, supervisors and management for Defendant.

8.

Defendant discriminated against Plaintiff by engaging in and/or allowing a continuing course of conduct, including but not limited to, discrimination and harassment, and retaliated against Plaintiff for reporting and opposing said harassment and discrimination.

9.

Plaintiff is a lesbian woman. At all material times herein, Plaintiff was a qualified individual with a disability, including but not limited to degenerative spine disease, thyroid disease, and cervical cancer.

10.

Defendant hired Plaintiff on or about January 25, 2016 as a laboratory assistant.

11.

Defendant employs more than 50 employees in the state of Oregon. Plaintiff worked for at least 12 months prior to her need for medical leave.

12.

Defendant's policy allowed for employees to take vacation leave and family and medical leave under FMLA, but in practice Defendant harassed and criticized employees who took leave.

13.

On or around March 2017, Plaintiff took FMLA leave for a medical condition.

14.

During Plaintiff's employment, Defendant's employees, including but not limited to, her supervisor Lisa Miller and manager Elizabeth Gray, subjected Plaintiff to discrimination and harassment, including upon her return from FMLA leave in or around July 2017.

15.

Prior to taking FMLA leave, Plaintiff had not received any write-ups or was subjected to any other disciplinary actions.

16.

Upon her return from FMLA leave, Plaintiff was retaliated against and treated differently than other employees who have not taken FMLA leave, including but not limited to, her supervisor Lisa Miller, excessive and improper write-ups, including reprimand for the dates of absences that constituted her

leave period, spreading rumors that Plaintiff had stolen a gift card and spit on Lisa Miller's desk, falsely accusing Plaintiff of not working while on the clock, accused Plaintiff of taking excessive breaks, and failing to meet attendance standards. Lisa Miller also falsified employer records to support her false accusations made against Plaintiff.

17.

Plaintiff sought to transfer to a different division, but the excessive and improper write-ups she received in retaliation for her use of FMLA leave were used to prevent Plaintiff from obtaining a transfer to any other of Defendant's divisions.

18.

Plaintiff complained to Lisa Miller's boss, Elizabeth Gray, about the retaliatory conduct she was being subjected to by Lisa Miller, but the retaliation continued and worsened.

19.

Plaintiff made numerous complaints to Defendant's Human Resources Department, but the retaliatory conduct never stopped.

20.

Plaintiff's health was adversely affected as a result of the stress caused by Defendant's unlawful employment practices, which resulted in her taking a second period of FMLA leave.

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21.

On or about June 20, 2018, Plaintiff resigned after Defendant accused her of failing to carry out her job duties, which was later admittedly a false accusation.

22.

Defendant subsequently admitted to altering this document to falsely represent that Plaintiff was failing to carry out her job duties.

### **First Claim for Relief**

#### **Title VII - Retaliation**

23.

Plaintiff realleges paragraphs 1 through 22.

24.

Defendant discriminated against Plaintiff in the terms and conditions of her employment due to Plaintiff's good faith reporting and/or opposition to unlawful employment practices, in violation of Title VII.

25.

Defendant's treatment of Plaintiff as alleged was due, at least in part, to Plaintiff's reporting and/or opposition to unlawful employment practices violating Title VII.

26.

As a result of Defendant's unlawful conduct, Plaintiff has incurred and continues to incur lost wages and benefits in an amount to be proven at trial. Plaintiff will continue to have lost income and benefits into the future.

27.

Plaintiff is entitled to recover her costs and attorney fees pursuant to 42 U.S.C. § 1988 and Title VII.

28.

As a direct and proximate result of Defendant's conduct, Plaintiff has suffered and will continue to suffer mental stress, humiliation, inconvenience and loss of enjoyment of life to all her non-pecuniary loss in an amount to be determined at trial.

29.

Defendant's conduct was willful, malicious and/or done with reckless indifference to Plaintiff's federally protected rights. Defendant should be assessed punitive damages in an amount to be determined at trial.

### **Second Claim for Relief**

#### **FMLA – Medical Leave Interference, Discrimination and Retaliation**

30.

Plaintiff realleges paragraphs 1 through 29.

31.

At all material times, Plaintiff had been employed by Defendant for 12 months and had performed at least 1,250 hours of service for Defendant during the preceding 12-month period.

32.

At all material times, Plaintiff suffered from a serious health condition.

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33.

Plaintiff utilized leave that was protected leave under FMLA.

34.

As set forth above, Defendant denied, interfered with, discriminated and/or retaliated against Plaintiff for utilizing protected medical leave.

35.

In perpetrating the above actions, Defendant violated 29 U.S.C. § 2601 *et seq.* causing Plaintiff to suffer damages.

36.

As a result of Defendant's unlawful conduct, Plaintiff has incurred and continues to incur lost wages and benefits in an amount to be proven at trial. Plaintiff will continue to have lost income and benefits into the future.

37.

In perpetrating the above actions, Defendant acted willfully and with knowledge that its actions were in violation of FMLA or with reckless disregard of whether it was violating FMLA. As such, Plaintiff is entitled to liquidated damages for Defendant's violation of her FMLA rights in an amount equal to the sum of Plaintiff's lost wages and benefits, plus prejudgment interest thereon pursuant to 29 U.S.C. § 2617(a)(1)(A)(iii).

38.

Plaintiff is entitled to recover her costs and attorney's fees pursuant to 29 U.S.C. § 2617(a)(3).

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### **Third Claim for Relief**

#### **ADA – Disability/Perceived Disability Discrimination**

39.

Plaintiff realleges paragraphs 1 through 38.

40.

Throughout her employment, Plaintiff had a disability covered by the ADA.

41.

Defendant knew about Plaintiff's disability as alleged supra.

42.

Alternatively, Defendant perceived Plaintiff to be disabled and/or Plaintiff had a record of such disability.

43.

Defendant's harassment and retaliation towards Plaintiff was substantially motivated by her disability/perceived disability and constitutes unlawful disability discrimination in violation of the ADA.

44.

As a result of Defendant's unlawful conduct, Plaintiff has incurred and continues to incur lost wages and benefits in an amount to be proven at trial. Plaintiff will continue to have lost income and benefits into the future.

45.

As a direct and proximate result of Defendant's conduct, Plaintiff has suffered and will continue to suffer mental stress, humiliation, inconvenience

and loss of enjoyment of life all to her non-pecuniary loss in an amount to be determined at trial.

46.

Plaintiff is entitled to recover her costs and attorney fees pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 2000e-5(k) as incorporated into the ADA by 42 U.S.C. § 12117(a).

47.

Defendant's conduct was willful, malicious and/or done with reckless indifference to Plaintiff's federally protected rights. Defendant should be assessed punitive damages pursuant to 42 U.S.C. § 1981(b)(1) in an amount to be determined at trial.

### **Prayer for Relief**

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For permanent injunctive relief enjoining Defendant, its officers, employees and agents from engaging in any harassment or discrimination or for retaliating against any employee opposing unlawful employment practices;
2. Economic damages, including past and future wage loss, in an amount to be determined at trial,
3. Non-economic damages to be determined at trial;
4. Punitive damages in an amount to be determined at trial;
5. Reasonable costs and attorney fees; and

6. For such other and further relief as the Court may deem just and equitable.

DATED this 14<sup>th</sup> day of November 2019.

GILROY | NAPOLI | SHORT LAW GROUP

/s/ Veronica Rodriguez

Veronica R. Rodriguez, OSB #181818  
Of Attorneys for Plaintiff